

Docket No.: AMAZON.053A

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APPEAL BRIEF

Applicant : Bezos et al.
 App. No : 09/715,929
 Filed : November 17, 2000
 For : METHODS AND SYSTEMS FOR
 PROCESSING DISTRIBUTED
 FEEDBACK
 Examiner : Susanna M. Meinecke Diaz
 Art Unit : 3623


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Mail Stop Appeal Brief-Patents
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 P.O. Box 1450
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Sir:

In accordance with the Notice of Appeal filed June 22, 2005, Applicant submits this
 Appeal Brief.

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I. REAL PARTY IN INTEREST

The real party in interest in the present application is Amazon.com, Inc.

II. RELATED APPEALS AND INTERFERENCES

An appeal is currently pending in U.S. Appl. No. 09/715,850, filed November 17, 2000, ("the '850 application"), which is owned by the assignee of the present application. The '850 application discloses methods and systems for distributing information within a dynamically defined community.

III. STATUS OF CLAIMS

Claims 1-21 are pending in the present application. Claims 12-18, 20 and 21 have been withdrawn from consideration. Claims 1-11 and 19, which are listed in the attached claims appendix are the subject of this appeal.

IV. STATUS OF AMENDMENTS

No amendments were made in response to the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application includes two independent claims. Each independent claim is paraphrased below, with citations to corresponding portions of the specification and drawings. These citations are provided in order to illustrate specific examples and embodiments of the recited claim language, and not to limit the claims.

Independent Claim 1 is directed to a method of evaluating a product review displayed in connection with a networked commerce site (850, Fig. 8). The method comprises:

- providing a product review authored by a first customer over a network to a plurality of other customers (see, e.g., Figs. 3B, 3C, 4; Fig. 8; page 2, lines 14-17; page 6, line 28 to page 7, line 9; and page 26, line 19 to page 27, line 17);

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- receiving votes over the network from other customers indicating whether the product review was helpful (see, e.g., 704, Fig. 7, page 3, line 28 to page 4, line 2; and page 28, lines 20-23);
- tallying the votes received for the product review (see, e.g., 706, Fig. 7; page 28, lines 23-24);
- providing over the network an indication related to the vote tally for the product review in association with the product review (see, e.g., Fig. 4, page 3, lines 29-31; and page 9, lines 32-33);
- tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review (see, e.g., page 15, line 28 to page 16, line 5; and page 28, lines 25-27);
- assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer (see, e.g., 716, Fig. 7; Fig. 4; page 4, lines 3-10; and page 29, lines 1-5); and
- displaying the designation in association with the product review (see, e.g., 718, 720, Fig. 7; page 4, lines 3-10; and page 29, lines 1-5).

Independent Claim 19 is directed to a method of evaluating a product review displayed in connection with a networked commerce site (850, Fig. 8). The method comprises:

- transmitting the product review to a plurality of customers (see, e.g., Figs. 3B, 3C, 4; Fig. 8; page 2, lines 14-17; page 6, line 28 to page 7, line 9; and page 26, line 19 to page 27 , line 17);
- receiving from at least a portion of the plurality of customers' evaluations indicating whether the product review was useful (see, e.g., 704, Fig. 7, page 3, line 28 to page 4, line 2; and page 28, lines 20-23);

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- tallying evaluations for a plurality of reviews from at least a first customer to provide a combined tally for the evaluations (see, e.g., page 15, line 28 to page 16, line 5; and page 28, lines 25-27); and
- transmitting information related to the evaluations and the combined tally for display in association with the product review (see, e.g., 718, 720, Fig. 7; page 4, lines 3-10; and page 29, lines 1-5).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed on appeal:

1. The rejection of Claims 1-7, 10, and 11 under 35 U.S.C. § 102(a) as being anticipated by a collection of Epinions.com articles, including "Home, Netscape, Yahoo! Veterans Announce Epinions.com" (July 12, 1999), "Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions" (September 8, 1999), Barrett, "What's Your Epinion?" (September 13, 1999), Tedeschi, "Consumer Products are Being Reviewed on More Web Sites, Some Featuring Comments From Anyone With an Opinion" (October, 25, 1999), Wohl, "User Review - Your Opinions Are Highly Valued on the Web" (November 8, 1999), collectively referred to as "Epinions" or the "Epinions articles".

2. The rejection of Claims 8, 9, and 19 under 35 U.S.C. § 103(a) as being unpatentable over the Epinions articles.

Appellants will treat the Epinions articles as prior art for purposes of this appeal, but reserve the right to later disqualify all or some of the articles as prior art.

VII. ARGUMENT

The rejection of Claims 1-7, 10, and 11 under 35 U.S.C. § 102(a)

For the reasons set forth below, Appellants respectfully submit that the rejection of Claims 1-7, 10, and 11 35 U.S.C. § 102(a) is improper.

A prior art reference does not anticipate the pending claims if it does not, alone, identically disclose each element of the Applicant's claims. MPEP § 2131; *See also, In re Attwood*, 148 USPQ 203, 210-211 (CCPA 1966). Even if the prior art disclosure is

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"substantially the same" as the claimed invention, anticipation may not be found. Jamesbury Corp. v. Litton Industrial Products, Inc., 756 F.2d 1556, 1560, 225 USPQ 253, 256 (Fed. Cir. 1985). Only when a prior art reference claim either expressly or inherently describes each and every element as set forth in the claim should the claims be rejected as being anticipated. Verdegaal Bros., Inc. V. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ 2d. 1051, 1053 (Fed. Cir. 1987); *See generally, In re Oelrich*, 666 F.2d 578, 212 USPQ 323 (CCPA 1982).

Because the Epinions articles do not disclose, expressly or inherently, each claim element of Claims 1-7, 10, and 11, Appellants submit that the rejection of these claims is improper.

Independent Claim 1

As set forth below, the rejection of Claim 1 is improper because the applied references do not either expressly or inherently describe each and every element of Claim 1. The claim is reproduced below.

1. A method of evaluating a product review displayed in connection with a networked commerce site, comprising:

- providing a product review authored by a first customer over a network to a plurality of other customers;

- receiving votes over the network from other customers indicating whether the product review was helpful;

- tallying the votes received for the product review;

- providing over the network an indication related to the vote tally for the product review in association with the product review;

- tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review;

- assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer; and

- displaying the designation in association with the product review.

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The Epinions articles do not expressly or inherently describe “tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review,” as recited by Claim 1. Further, the Epinions articles do not expressly or inherently describe “assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer,” as recited by Claim 1.

In rejecting Claim 1 over Epinions, it is not clear if the Examiner is asserting that the Epinions articles expressly disclose “tallying votes received for a plurality of reviews authored by the first customer to provide a total tally” and “assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer,” or that the Epinions articles inherently disclose the foregoing elements. While the Examiner never acknowledges that any of the claim elements are not expressly disclosed by the Epinions articles, and never specifically states that any of the claim elements are inherently disclosed by the Epinions articles, the Examiner uses the following language “[I]n order to assess which reviewers provide the most useful reviews, there must be a tally of the assessments of usefulness of the reviews accumulated from the other community members” (page 2 of the Final Office Action, emphasis added), as well as similar language elsewhere, which indicates that the Examiner may be making an inherency argument. The following discussion addresses the failure of the Epinions articles to either expressly or inherently disclose certain claim elements.

The Examiner appears (at pages 2, 6 and 7 of the Final Office Action) to assert that the elements “tallying votes received for a plurality of reviews authored by the first customer to provide a total tally” and “assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer,” are disclosed by “Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions” at paragraphs 2, 4, 7, and 8, “Home, Netscape, Yahoo! Veterans Announce Epinions.com,” paragraph 4, and “User Review – Your Opinions Are Highly Valued on the Web”, paragraph 11.

However, “Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions,” paragraphs 2, 4, 7, and 8, “Home, Netscape, Yahoo! Veterans Announce epinions.com,” paragraph 4, “Consumer Products are Being Reviewed on More Web

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Sites," paragraph 5, "User Review – Your Opinions Are Highly Valued on the Web," paragraph 11, "What's your Epinion?," paragraph 5, cited by the Examiner, respectively merely recite:

Epinions.com is a platform for consumers to share advice and recommendations with others on what to buy and what not to buy based on real experiences. At Epinions.com, consumers have the final say: they write about products they love or hate, rate the usefulness of others' epinions, and read epinions from people they trust. Consumers can rely on Epinions.com to offer brutally honest, relevant, and unbiased epinions. In order to maintain objectivity, Epinions.com does not create its own editorial content and the company does not sell products. Epinions.com aims to serve two main groups: shoppers who want the bottom line and reviewers who tell it like it is. (Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions, paragraph 2)

Transparency Ensures Trust and Quality. Users need to trust the advice they receive. At Epinions.com, users can find out about the reviewer giving advice simply by clicking on a reviewer's profile page, which includes everything from a biography and photograph to a list of all written reviews with community ratings. In addition, Epinions.com ensures high-quality content by rewarding only that content which is helpful to shoppers. Reviewers are paid solely according to the usefulness of their content. (Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions, paragraph 4)

Epinions.com reviewers are experts. They may not be professionals, but they do have something just as valuable to offer. Epinions.com offers enthusiasts a forum to share their expertise. Top community-rated reviewers will be featured prominently on the site and will become personalities, just like professional reviewers. They finally will gain the recognition they deserve. (Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions, paragraph 7)

Epinions.com reviewers will get paid, in cash, based on the usefulness of their guidance. The Epinions.com Royalties program will be able to redeem their earnings in the form of a check or will have the option to donate their earnings to charity. Reviewers can begin earning money immediately and redemption will be available by the end of 1999. (Epinions.com Announces the Launch of its Free Online Shopping Guide Powered by Consumer Opinions, paragraph 8)

Reviews written by consumers for consumers; in order to maintain a high-level of quality, all reviews will be ranked by users and sorted by their usefulness. (Home, Netscape, Yahoo! Veterans Announce epinions.com, paragraph 4)

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The cornerstone of the Epinions service, for instance, is this it both rewards and rates product reviewers, in hopes of giving them enough incentive to provide useful opinions. Anyone can sign up to give advice of products that fit into the site's 12 categories, and prospective shoppers can browse through the reviews and rate them on a scale from "not useful" to "very useful." To build credibility – and eliminate suspicion that they are merely company shills in disguise – advisers can build a page on the site with photos and personal information. (Consumer Products are Being Reviewed on More Web Sites, paragraph 5).

authors are rewarded by having highly rated opinions shown at the top of a search. That's important because the first opinions are the ones most often read. (User Review – Your Opinions Are Highly Valued on the Web, paragraph 11).

As a little incentive, Epinions.com promises to reward your hard work with cold hard cash if your reviews prove popular. Popularity is measured in terms of how often your review is read, and how highly other Epinions.com members rate it. Don't expect to get rich, though. Writing an auto review, for example, currently earns you 3 [cent] per member visit, or \$30 per 1000 readers. (What's your Epinion?, paragraph 5)

None of the foregoing citations expressly or inherently describe "tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review" or "assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer," as recited by amended Claim 1.

Even if, as asserted by the Examiner, the Epinions articles imply that a tally is kept of how often a given review is read (pages 3 and 7 of the Final Office Action), that reviewers' pictures might be featured on the web site if their reviews are widely read (pages 3 and 7 of the Final Office Action), that a list of all written reviews with community ratings is made available to community members (pages 3 and 7 of the Final Office Action), none of the citations relied on by the Examiner disclose, expressly or inherently, "tallying votes received for a plurality of reviews authored by the first customer to provide a total tally" or "assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer."

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Thus, for example, even if the Epinions articles disclose keeping a tally of how often a review is read, the articles do not disclose providing a total tally based on votes received for a plurality of reviews. Further, even if the Epinions articles disclose featuring top community-rated reviewers prominently on the Epinions.com site, the articles do not disclose how a determination is made as to which reviewers are top community-rated reviewers, much less disclose assigning a designation to a reviewer based on a total vote tally for a plurality of reviews authored by the reviewer.

With respect to inherency, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Because the missing descriptive matter is not necessarily present in Epinions, Epinions does not inherently disclose "tallying votes received for a plurality of reviews authored by the first customer to provide a total tally" and "assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer."

For example, even if the Epinions articles disclose keeping a tally of how often a review is read, or measuring how highly readers rate a review, it does not necessarily follow that Epinions must provide a total tally based on votes received for a plurality of reviews from a customer. Further, even if the Epinions articles disclose featuring on the Epinions web site the reviewers who are most highly rated by the community, it does not necessarily follow that Epinions must assign a designation to a customer based on the total vote tally for the plurality of reviews authored by the customer. For example, it may be determined that a reviewer is highly

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rated if any one of the reviewer's reviews receives a "very useful" rating, rather than making such a determination based on the total vote tally for the plurality of reviews authored by the customer.

Because the references cited by the Examiner do not expressly or inherently describe elements in Claim 1, the rejection of Claim 1 is improper.

Dependent Claim 2

Because Claim 2 depends from Claim 1, the rejection of Claim 2 is improper for the reasons set forth above for Claim 1. In addition, the rejection of Claim 2 is improper because the Epinions articles do not expressly or inherently disclose the elements added by Claim 2, namely that the votes tallied in Claim 1 "comprise votes indicating that the product review is helpful and votes indicating that the product review is not helpful." The Final Office Action does not fully address these elements.

Dependent Claim 3

Because Claim 3 depends from Claim 1, the rejection of Claim 3 is improper for the reasons set forth above for Claim 1. In addition, the rejection of Claim 3 is improper because the Epinions articles do not expressly or inherently disclose the elements added by Claim 3, namely "wherein the helpful votes are weighted differently than non-helpful vote." The citations relied on by the Examiner in rejecting this claim do not even mention weighting one type of vote differently than another type of vote.

Dependent Claim 4

Because Claim 4 depends from Claim 1, the rejection of Claim 4 is improper for the reasons set forth above for Claim 1. In addition, the rejection of Claim 4 is improper because the Epinions articles do not expressly or inherently disclose the elements added by Claim 4, namely "displaying a ranking in association with a plurality of the first customer's reviews, wherein the ranking is based at least in part on the vote tally." The citations relied on by the Examiner in rejecting this claim do not even disclose displaying a ranking in association with a plurality of the first customer's reviews, much less that the ranking is based at least in part of the vote tally as claimed. The Examiner appears to be confusing a rating of a review with a ranking based on a vote tally for a plurality of reviews.

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Dependent Claim 5

Because Claim 5 depends from Claim 4, the rejection of Claim 5 is improper for the reasons set forth above for Claim 4. In addition, the rejection of Claim 5 is improper because the Epinions articles do not expressly or inherently disclose the elements added by Claim 4, namely "wherein the ranking is determined by the number of helpful and unhelpful votes received for one or more of the first customer's reviews." The citations relied on by the Examiner in rejecting this claim do not disclose determining a ranking based on both the number of helpful votes and the number of unhelpful votes received for one or more of a customer's reviews.

Dependent Claim 6

Because Claim 6 depends from Claim 4, the rejection of Claim 6 is improper for the reasons set forth above for Claim 4. In addition, the rejection of Claim 6 is improper because the Epinions articles do not expressly or inherently disclose the elements added by Claim 6, namely "comprising rewarding the first customer at least partly in response to the first customer achieving a first ranking." The citations relied on by the Examiner in rejecting this claim do not disclose the foregoing elements, and the Final Office Action does not fully address these elements.

Dependent Claim 7

Because Claim 7 depends from Claim 1, the rejection of Claim 7 is improper for the reasons set forth above for Claim 1. In addition, the rejection of Claim 7 is improper because the Epinions articles do not expressly or inherently disclose the elements added by Claim 7, namely "displaying the designation in association with a plurality of reviews authored by the first customer." The Final Office Action does not fully address these elements.

Dependent Claim 10

Claim 10 depends from, and stands or falls with, Claim 1.

Dependent Claim 11

Because Claim 11 depends from Claim 1, the rejection of Claim 11 is improper for the reasons set forth above for Claim 1. In addition, the rejection of Claim 11 is improper because the Epinions articles do not expressly or inherently disclose the elements added by Claim 11,

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namely "generating a profile page associated with the first customer, wherein the profile page includes the number of unhelpful votes the first customer has received." The citations relied upon by the Examiner do not discuss providing the number of unhelpful votes a customer has received. The Final Office Action does not fully address the claim elements.

The rejection of Claims 8, 9, and 19 under 35 U.S.C. § 103(a)

For the reasons set forth below, Appellants respectfully submit that the obviousness rejection of Claims 8, 9, and 19 is improper.

Dependent Claim 8

Because Claim 8 depends from Claim 1, the rejection of Claim 8 is improper for the reasons set forth above for Claim 1. In addition, as admitted by the Examiner, the Epinions articles fail to disclose preventing a vote on the provided review from the first customer from being included in the tally of votes received for the product review. Nonetheless, the Examiner argues that it would have been obvious to adapt Epinions.com to prevent a vote on the product review from the first customer from being included in a tally of votes received for the product review in order to prevent the first customer from unfairly skewing the voting results in his/her favor while ignoring the general consensus of the Epinions community as a whole. However, the Epinions articles do not even mention, and do not appear to recognize or be concerned with any problems associated with a customer who would unfairly skew voting results. Further, because the Epinions articles do not even mention putting any limitations on voting, do not describe any mechanism for providing any limitations on voting, and appear unconcerned with putting any limitations on voting, there would be no motivation to modify the disclosure of the Epinions articles as suggested by the Examiner.

Dependent Claim 9

Because Claim 9 depends from Claim 1, the rejection of Claim 9 is improper for the reasons set forth above for Claim 1. In addition, as admitted by the Examiner, the Epinions articles fail to disclose each of the other customers is prevented from voting more than once in relation to the product review. Nonetheless, the Examiner argues that it would have been obvious to modify Epinions.com such that each of the other customers is prevented from voting

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more than once in relation to the product review in order to help ensure that each customer has no more and no less than his/her fair representation in the vote, thereby reducing the likelihood of skewing voting results in favor of the opinion of a single individual or limited group of individuals and increasing the likelihood of more accurately representing the opinions of the Epinions.com community as a whole.

However, the Epinions articles do not even mention, and do not appear to recognize or be concerned with any problems associated with a customer who would unfairly skew voting results, much less a customer who would unfairly skew voting results by voting more than once. Further, because the Epinions articles do not even mention putting any limitations on voting, do not describe any mechanism for providing any limitations on voting, and appear unconcerned with putting any limitations on voting, there would be no motivation to modify the disclosure of the Epinions articles as proposed by the Examiner.

Independent Claim 19

With respect to Claim 19, the Examiner asserts that Claim 19 recites limitations already addressed by the rejection of Claim 1 and that therefore the same rejection applies. As similarly discussed above with respect to Claim 1, the Epinions articles do not do not expressly or inherently describe "tallying evaluations for a plurality of reviews from at least a first customer to provide a combined tally for the evaluations," as recited by Claim 19. Therefore, the rejection of Claim 19 is improper.

In addition, the rejection of Claim 19 is improper because the cited references neither teach nor suggest "transmitting information related to the evaluations and the combined tally for display in association with the product review." While the Examiner admits that the Epinions articles do not disclose that the combined tally of evaluations for the plurality of reviews is displayed in association with a single product review, nonetheless, the Examiner maintains that it would have been obvious to adapt Epinions.com to actively display the combined tally of evaluations for the plurality of reviews in association with a single product review in order to provide the community of users with a tool to conveniently attain a more accurate assessment of

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the performance of each review in relation to other reviews, thereby placing the assessment in a more meaningful context.

However, as discussed above, the Epinions articles fail to disclose tallying evaluations for a plurality of reviews from at least a first customer to provide a combined tally for the evaluations. Therefore, there would be no motivation to adapt Epinions.com as disclosed by the Epinions articles to display such a combined tally in association with a review. Further, it is not clear how providing such a combined tally in association with a review would, in the Examiner's words, "conveniently attain a more accurate assessment of the performance of each review in relation to other reviews."

CONCLUSION

For the reasons set forth above, the rejections of Claims 1-11 and 19 are improper and should be reversed.



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VIII. CLAIMS APPENDIX

1. A method of evaluating a product review displayed in connection with a networked commerce site, comprising:

providing a product review authored by a first customer over a network to a plurality of other customers;

receiving votes over the network from other customers indicating whether the product review was helpful;

tallying the votes received for the product review;

providing over the network an indication related to the vote tally for the product review in association with the product review;

tallying votes received for a plurality of reviews authored by the first customer to provide a total tally, the total tally including votes received for the product review;

assigning a designation to the first customer based on the total vote tally for the plurality of reviews authored by the first customer; and

displaying the designation in association with the product review.

2. The method as defined in Claim 1, wherein the votes comprise votes indicating that the product review is helpful and votes indicating that the product review is not helpful.

3. The method as defined in Claim 2, wherein the helpful votes are weighted differently than non-helpful vote.

4. The method as defined in Claim 1, displaying a ranking in association with a plurality of the first customer's reviews, wherein the ranking is based at least in part on the vote tally.

5. The method as defined in Claim 4, wherein the ranking is determined by the number of helpful and unhelpful votes received for one or more of the first customer's reviews.

6. The method as defined in Claim 4, further comprising rewarding the first customer at least partly in response to the first customer achieving a first ranking.

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7. The method as defined in Claim 1, further comprising displaying the designation in association with a plurality of reviews authored by the first customer.

8. The method as defined in Claim 1, further comprising preventing a vote on the providing review from the first customer from being included in the tally of votes received for the product review.

9. The method as defined in Claim 1, wherein each of the other customers is prevented from voting more than once in relation to the product review.

10. The method as defined in Claim 1, further comprising generating a profile page associated with the first customer, wherein the profile page includes an indication related to the number of helpful votes the first customer has received for a plurality of reviews authored by the customer.

11. The method as defined in Claim 1, further comprising generating a profile page associated with the first customer, wherein the profile page includes the number of unhelpful votes the first customer has received.

12. -18. (Withdrawn)

19. A method of evaluating a product review displayed in connection with a networked commerce site, comprising:

transmitting the product review to a plurality of customers;

receiving from at least a portion of the plurality of customers evaluations indicating whether the product review was useful;

tallying evaluations for a plurality of reviews from at least a first customer to provide a combined tally for the evaluations; and

transmitting information related to the evaluations and the combined tally for display in association with the product review.

IX. EVIDENCE APPENDIX

None

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X. RELATED PROCEEDINGS APPENDIX

None

PAT-ABRIEF

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